

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FEB 25 2005

FILED

IN THE MATTER OF THE)	PETITION
UNAUTHORIZED INSURANCE)	& NOTICE OF HEARING
ACTIVITIES OF A.I. LIFE, LTD., and)	
ROBERT GATTUSO,)	CAUSE NO. I-57
)	
RESPONDENTS.)	

COMES NOW, the Nebraska Department of Insurance, and hereby petitions the Director of Insurance for all such relief as may be appropriate in this matter, following a hearing thereon. For the Department's petition, the Department states and alleges as follows:

Jurisdiction

1. Petitioner, the Nebraska Department of Insurance (hereinafter "Department"), is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the business of insurance and of entities engaging in the business of insurance in Nebraska pursuant to Neb.Rev.Stat. §§ 44-101.01, 44-302, 44-303, 44-1521 et seq., 44-2001 et seq. (Reissue 2004), 44-3520 et seq. and § 77-907 et seq. (Reissue 2003).

2. Respondent A.I. Life, Ltd. is a limited liability corporation duly organized in Charlestown, Nevis, West Indies, with its registered address being Global Corporate & Trust Management Limited, Dunbar Estate, Zetlands, Nevis, and its principal place of business located at 600 E. Las Colinas Blvd, Suite 900, Irving, Texas 75039.

3. Respondent Robert Gattuso is an individual with a last known residential address of 4550 New Hope Road, Aubrey, Texas 76227, and a business address also of 600 E. Las Colinas Blvd, Suite 900, Irving, Texas 75039. Respondent Gattuso was the President of Respondent A.I. Life, Ltd. at all time material hereto.

4. Neb.Rev.Stat. § 44-2004 (Reissue 2004) provides that “[a]ny act of transacting an insurance business as set forth in section 44-2002 by any unauthorized insurer shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such insurer in any action, suit, or proceeding in any court by the Director of Insurance or by the state or in any proceeding before the director and which arises out of transacting an insurance business in this state by such insurer.”

5. Neb.Rev.Stat. § 44-302 (Reissue 2004) provides that “...all insurance business transacted in whole or in part within or outside this state, the subject and matter of which is located wholly or in part in this state, shall be subject to and be governed by this chapter, and the records of such insurance company, agent, solicitor, broker, surveyor or adjuster doing business in this state shall be subject to inspection and examination of the Department of Insurance.”

6. Neither of Respondents identified herein have ever been licensed by the Department in accordance with any of the requirements of Chapter 44 of the Nebraska Revised Statutes; however, by virtue of their insuring contractual liability risks in Nebraska from 1996 through at least 2003, Respondents have engaged in the transaction of the business of insurance in Nebraska.

7. The Department’s jurisdiction and control over Respondents have been present at all time material hereto.

Unauthorized Insurance

8. Neb.Rev.Stat. § 44-303 (Reissue 2004) provides that “[n]o insurance company shall transact any insurance business in this state unless it has received a certificate of authority from the Department of Insurance to do so.”

9. Respondents violated Neb.Rev.Stat. § 44-303 by entering into insurance contracts between February 1996, through at least 2003, as an insurer of liability risks of Nebraska businesses and in particular, insuring contractual obligations of automobile dealerships and motor vehicle service contract promoters, without a certificate of authority from the Department.

10. Moreover, the Nebraska Motor Vehicle Service Contract Reimbursement Insurance Act provides that “[n]o motor vehicle service contract shall be issued, sold, or offered for sale in this state unless: (1) the motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer *authorized* to do business in the state.” Neb.Rev.Stat. § 44-3522 (Reissue 2004)(emphasis added).

11. Respondents violated Neb.Rev.Stat. § 44-3522 upon issuing insurance policies to Nebraska policyholders, including automobile dealerships and other business entities, insuring thousands of vehicle service contract obligations in Nebraska without authorization from the Department.

12. In addition, Nebraska law also has general prohibitions within the Unauthorized Insurers Act which provides in part that:

(1) It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the director...

(2) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer shall constitute the transaction of an insurance business in this state...:

(a) The making of or proposing to make, as an insurer, an insurance contract;...

(c) The taking or receiving of any application for insurance;

(d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;

(e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction

of insurance with respect to subjects of insurance resident, located, or to be performed in this state...;

(g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or

(h) The transacting or proposing to transact any insurance business in substance equivalent to any of the provisions of subdivisions (a) through (g) of this subsection in a manner designed to evade the provisions of the statutes.

Neb. Rev. Stat. § 44-2002 (Reissue 2004).

13. Respondents violated Neb. Rev. Stat. § 44-2002(2)(a), (c)-(f) as a result of the following conduct:

- a. Commencing in February, 1996, and continually thereafter through at least 2003, Respondent A.I. Life entered into insurance contracts with numerous Nebraska businesses as an insurer of risks located in Nebraska, including but not limited to, Anderson Ford Co., and H & M Financial, Inc.
- b. Commencing in February, 1996, and continually thereafter through at least 2003, Respondent Gattuso entered into insurance contracts with numerous Nebraska businesses on behalf of Respondent A.I. Life as an unauthorized insurer of risks located in Nebraska, including but not limited to, Anderson Ford Co., and H & M Financial, Inc
- c. Respondents engaged directly, or on behalf of an unauthorized insurer, in the transaction of insurance business in Nebraska without a license.
- d. Commencing in February, 1996 and continually thereafter through at least 2003, Respondents took or received applications for insurance from Nebraska businesses.
- e. Respondent A.I. Life received premium for insurance issued to Nebraska businesses insuring their contractual obligations arising under motor vehicle service contracts issued to the public.

- f. Respondent Gattuso issued or delivered contracts of insurance to businesses in Nebraska during the aforementioned time period.
- g. Commencing in February, 1996, and continually thereafter through at least 2003, Respondents A.I. Life and Gattuso directly negotiated, procured, or effected aforementioned said insurance including the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, fixing of rates, or investigation or adjustment of claims or losses or in matters subsequent to the effectuation of the insurance contracts insuring the liability obligations of Nebraska businesses.
- h. On or before January 1, 1999, Respondents A.I. Life and Gattuso also aided at least one other insurer, National Warranty Risk Retention Group, in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof, or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, fixing of rates, or investigation or adjustment of claims or losses or in matters subsequent to the effectuation of the insurance contracts insuring the liability obligations of Nebraska businesses.

14. Respondents also violated Neb.Rev.Stat. § 44-2002(2)(g) as a result of Respondents issuing contractual liability insurance contracts in Nebraska that fall within the liability line of insurance within the meaning of Neb.Rev.Stat. § 44-201(10) (Reissue 2004).

15. Respondents also violated Neb.Rev.Stat. § 44-2002(2)(h) in that Respondents transacted insurance not only as described in Neb.Rev.Stat. § 44-2002(2)(a), (c)-(f) (Reissue 2004) but in a manner designed to evade the provisions of the statutes through purported reinsurance arrangements that were not lawful reinsurance, by creating confusion in the marketplace as to insurance risk transfer through affiliations and dealings with National Warranty Risk Retention Group, through improper participation in an unregistered purchasing group, namely, SuperDealer Purchasing Group, and/or through improper dealings and participation in a Nevis Island offshore trust, namely, Executive Security Trust, so as to evade insurance licensing requirements in the United States, including the insurance laws of Nebraska.

16. Neb.Rev.Stat. § 44-2002(3)(b) (Reissue 2004) provides that “[i]n the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of any insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.”

17. Numerous Nebraska policyholders insured by Respondents have liability obligations to service contract holders that remain unfulfilled, requiring Respondents to fund the insured policyholders to the full amount of such outstanding service contract claims.

Unfair Trade Practices

18. The Nebraska Unfair Insurance Trade Practices Act provides that “[i]t shall be an unfair trade practice in the business of insurance for any insurer to commit any act or practice defined in section 44-1525 if the act or practice (1) is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) has been committed with such frequency as to indicate a general business practice to engage in that type of conduct.” Neb.Rev.Stat. § 44-1524 (Reissue 2004)

19. Neb.Rev.Stat. § 44-1525 (Reissue 2004) provides that “[a]ny of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance:

- (1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which: (a) misrepresents the benefits, advantages, conditions, or

terms of any policy...(e) uses any name or title on any policy or class of policies which misrepresents the true nature thereof;...

- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is untrue, deceptive, or misleading...
- (10) Making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual person.

20. Respondents violated Neb.Rev.Stat. § 44-1525 as a result of the following conduct:

- a. Respondents made, issued or circulated, or caused to be made, issued or circulated, purported reinsurance agreements whereby Respondents misrepresented the benefits, advantages, conditions or terms of such agreements to Nebraska businesses by claiming to hold such liabilities as a lawful reinsurer.
- b. Respondents used the names A.I. Life and National Warranty Risk Retention Group, and reinsurance nomenclature to misrepresent the true nature by which Respondent A.I. Life acquired the risk from its Nebraska policyholders.
- c. Respondents disseminated statements with respect to A.I. Life's business as a lawful reinsurer which were untrue, deceptive, or misleading, and also disseminated statements containing assertions and representations regarding regulation of A.I. Life which were untrue, deceptive, or misleading given that A.I. Life lacked authority to assume the liability risks as an offshore entity.

21. Neb.Rev.Stat. § 44-1529 (Reissue 2004) provides that “[i]f...the director finds that the insurer charged has engaged in an unfair trade practice, he or she shall reduce his or her findings to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of such findings and an order requiring such insurer to cease and desist from engaging in the act or practice and he or she may order...(1) Payment of a monetary penalty of not more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation was committed flagrantly in conscious disregard of the Unfair Insurance Trade Practices Act, in which case the penalty shall be not more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars.”

22. Respondents engaged in flagrant violations of the law by participating in a complicated insurance scheme designed to evade insurance laws requiring purchasing groups to seek coverage from authorized insurers, to evade laws requiring the licensing of insurers in Nebraska, and finally, to evade laws requiring motor vehicle service contracts be insured by authorized insurers.

Premium Tax

23. Insurance companies transacting business in Nebraska must pay a tax (hereinafter “premium tax”) of one percent of the gross amount of direct writing premiums received for business done in this state. Neb.Rev.Stat. § 77-908 (Reissue 2003). Premiums shall mean the consideration paid to insurance companies for insurance and shall include policy fees, assessments, dues, or other similar payments. Neb.Rev.Stat. § 77-907(4) (Reissue 2003).

Taxable premiums shall include premiums paid for risks located in this state whether the insurance was written in this state or not. Neb.Rev.Stat. § 77-908 (Reissue 2003).

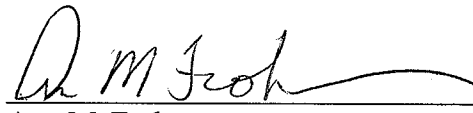
24. Premium tax is due on or before March 1 of each year for premiums received during the preceding calendar year. Neb.Rev.Stat. §77-908 (Reissue 2003). Insurers who fail to pay any premium tax when due shall pay interest at the rate prescribed by Neb.Rev.Stat. § 45-104.02 until such tax is paid. Neb.Rev.Stat. § 77-918 (Reissue 2003).

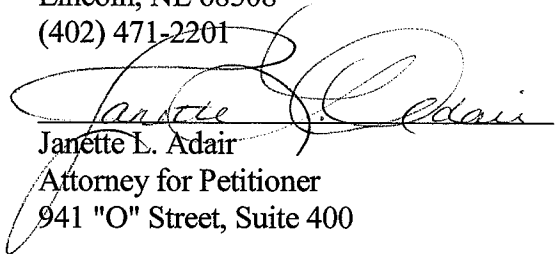
25. Respondent violated Neb.Rev.Stat. §77-907 et seq. by transacting insurance business in Nebraska and failing to report and remit premium tax.

WHEREFORE, Petitioner will set this matter for hearing to request relief as may be warranted including an order imposing such fines as are allowed by law, ordering all taxes due, and other necessary remedial action authorized by law including cease and desist and relief under Neb.Rev.Stat. § 44-2003(b) (Reissue 2004) as such relief may be warranted.

Dated this 25th day of February, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE
PETITIONER


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NOTICE OF HEARING

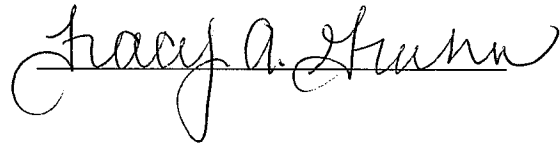
You are hereby notified that a hearing on this matter will be held at the Department of Insurance, 941 "O" Street, Suite 400, Lincoln, Nebraska, commencing on March 25, 2005 at 10:00 a.m. or as soon thereafter as the same may be heard.

You are further notified that this hearing will be conducted pursuant to the Administrative Procedure Act, Neb.Rev.Stat. §84-901 et seq. You shall have the opportunity to respond and present evidence on your own behalf. You have the right to be represented by legal counsel at your own expense. You have the right to review evidence against you prior to the hearing.

You are also notified that the Department may subpoena witnesses to testify against you and that agency subpoenas shall be issued to a party on request. Any witness at the hearing, or any person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts. This hearing will be an oral proceeding open to the public and shall be recorded by mechanized means. Reasonable accommodations will be provided to disabled persons upon advance request. The hearing will be transcribed at the request of any party with the expense of the transcription charged to the requesting party. This proceeding will be conducted by the Director of Insurance or by a hearing officer appointed by the Director. The hearing officer will have no prior knowledge of the matters involved in this proceeding. If you fail to appear, the Nebraska Department of Insurance will proceed to hearing, produce evidence and argument and a final decision or order will be forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition and Notice of Hearing was served upon Respondents by mailing a copy to Respondent A.I. Life at Global Corporate & Trust Management Limited, Dunbar Estate, Zetlands, Nevis, by Global Express Mail, recorded delivery, return receipt requested and at 600 E. Las Colinas Blvd, Suite 900, Irving, Texas 75039 by certified mail, return receipt requested. A copy of the Petition and Notice of Hearing was also served upon Respondent Gattuso at 4550 New Hope Road, Aubrey, Texas 76227, and 600 E. Las Colinas Blvd, Suite 900, Irving, Texas 75039 by certified mail, return receipt requested. Copies of the foregoing Petition and Notice of Hearing were also sent to a process server in the State of Texas to be served upon Respondents via personal service on this 25th day of February, 2005.

A handwritten signature in cursive script, reading "Tracy A. Shunn". The signature is written in dark ink and is positioned above a horizontal line.

TO: Respondent

FROM: Nebraska Department of Insurance

GENERAL PROCEDURE FOR DEPARTMENT OF INSURANCE HEARINGS

1. The Hearing Officer, who has no knowledge of the case, will open the hearing and will make the Notice of Hearing and Director's Order Appointing the Hearing Officer part of the record. The entire hearing is tape recorded.
2. The Hearing Officer will identify the attorney for the Department, the attorney for the Respondent, if any, and will state whether the Respondent is present. The Respondent may represent himself or herself. There is no requirement that an attorney represent the Respondent. The Department cannot give you advice about whether or not you should hire an attorney.
3. The Hearing Officer will ask for opening statements, first from the Department, then from the Respondent. An opening statement may be a short summary or a history of facts pertinent to the case. The opening statement is optional.
4. The Hearing Officer will ask the Department and the Respondent to present their cases. The Department will present its evidence first and the Respondent will follow. A presentation may consist of testimony by witnesses, including that of the Respondent, exhibits and testimony by other witnesses. Therefore, the Respondent should bring all that the Respondent wants the Hearing Officer to consider. The parties may object to a witness testifying at the hearing or to an exhibit which the opposing party wishes to present as evidence.
5. Any witness giving testimony in the proceeding will be sworn. The witness will first be asked questions by the party calling such witness. The opposing party will then have the opportunity to cross-examine that witness. The Hearing Officer also may ask a witness questions.
6. At the conclusion of each party's presentation, the Hearing Officer will ask for a closing statement. The closing statement is optional and may constitute a summary of the evidence presented and why the Respondent should or should not be granted an agent's license by the Department.
7. The Hearing Officer closes the hearing then reviews the evidence and makes a Recommended Finding to the Director. The Director may adopt the recommendation or arrive at a different conclusion. The Respondent may appeal the Director's Order to the Lancaster County District Court within 30 days after receiving the Order.